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June 24, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, N.W.
Room TWB-204
Washington, D.C. 20554

Re: Application by Qwest Communications International, Inc. for Authorization to
Provide In-Region, InterLATA Services in the state of Minnesota
WC Docket No. 03-90

Dear Ms. Dortch:

In my June 18, 2003 *ex parte* letter on behalf of AT&T Corp. ("AT&T"), I explained that Qwest continues to provide a specialized "UNE-Star" service to Eschelon and McLeod that is not available to other Minnesota competitive local exchange carriers ("CLECs"). Qwest's June 23, 2003 *ex parte* response confirms this discrimination is ongoing and precludes any finding of checklist compliance.

Qwest concedes that it continues to provide UNE-Star service to Eschelon and McLeod and does not deny that UNE-Star (known as "UNE-E" when provided to Eschelon and "UNE-M" when provided to McCleod) allows Eschelon and McLeod to order resold services and be charged much lower prices than other purchasers of resold services. Qwest does not contend that it currently provides UNE-Star to any CLEC other than Eschelon or McLeod, but claims that "CLECs can opt into any provision – including the UNE-Star provisions – in Qwest's interconnection agreements with Eschelon and McLeod." *Qwest June 23 Ex Parte* at 1. But Qwest stops short of providing the Commission with any citation to *specific* provisions of its amended Eschelon or McLeod agreements that set out the complete terms and conditions upon which it provides UNE-Star service to Eschelon and McLeod, and for good reason. The Eschelon and McLeod agreements – or at least the portions of those agreements that Qwest has deemed to file with state commissions and with respect to which CLEC could exercise 252(i) "opt-in" rights – contain only the most cryptic references to those services and plainly do not include all of the specific terms and conditions under which Qwest is providing UNE-Star service to Eschelon and McLeod.

Although Qwest has apparently been providing UNE-Star service to Eschelon, for example, since at least November 2000, the only interconnection agreement amendment that Qwest filed with state commissions at that time did not even mention UNE-Star or UNE-E and dealt instead only with access to the “Platform” (subject to a host of restrictions, including a supposed \$10 million payment from Eschelon to Qwest that was apparently refunded in a secret side deal, that were designed to prevent any other carrier from opting into even that arrangement). As the Minnesota PUC discovered in the course of its own section 271 proceedings, as well as its secret deals investigation, Qwest and Eschelon (like Qwest and McLeod) embodied the actual terms and conditions of their discriminatory arrangements in a number of “Confidential” side deals that were not filed with state commissions.¹ And Qwest’s response to the discovery of those secret side deals and the recognition that they would have to be filed was to pay Eschelon in a March 1, 2002 “Settlement Agreement” (attached hereto) to terminate the secret agreements and thereby to make sure that no other carrier could opt in.

That March 1, 2002 Settlement Agreement contains the first reference to “UNE-E,” which it defines as “a product purchased by Eschelon under its Interconnection Agreement, as amended in November of 2000 and July and August of 2001.” But the Settlement Agreement nowhere details the features of that “product purchased by Eschelon,” where the UNE-E product is reflected in the Eschelon Interconnection Agreement, the price that Eschelon pays for that product, the restrictions on its use, or how it is to be ordered (*e.g.*, what USOC codes are to be used to order it). In short, the actual UNE-E terms and conditions are *not* spelled out in the Eschelon agreement and amendments that have been filed. These are some of the reasons why two Minnesota commissioners have determined that Qwest cannot meet the checklist nondiscrimination requirements until UNE-Star services are changed to UNE-P services under the same terms and conditions available to other carriers.²

The Commission could hardly make a reasoned finding in these circumstances that Qwest currently makes UNE-Star service available to other carriers on a nondiscriminatory basis. Qwest does not dispute that, unlike services and products that are generally available on a nondiscriminatory basis, UNE-Star terms and conditions do not appear in Qwest’s SGAT or website. And the Eschelon and McLeod agreements do not reflect the full terms and conditions associated with Qwest’s current provision of UNE-Star services. There is no document or other source to which CLECs can turn for even a description of the service, much less its true price or the full range of terms and conditions that would apply to its purchase. To all carriers other than Eschelon and McLeod, UNE-E and UNE-M remain phantom services, without clearly defined terms, conditions or features. Unless and until Qwest files and makes available to other carriers the complete terms and conditions under which it is currently offering UNE-Star service to Eschelon and McLeod, this ongoing discrimination must be recognized as a checklist violation and Qwest’s application for interLATA authority in Minnesota must be denied.

¹ See Findings of Fact, Conclusions, Recommendation and Memorandum, *Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Minnesota Public Utilities Commission, Docket No. P-421/C-02-197 (September 20, 2002) ¶¶ 37-197.

² MPUC Comments at 32.

Sincerely,

Robert W. Quinn Jr.

cc: Gail Cohen
Janice Myles
Gary Remondino